

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ALAI PENE KOLOI,)	CIVIL NO. 13-00252 LEK-RLP
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION TO
)	DENY PLAINTIFF'S APPLICATION TO
vs.)	PROCEED WITHOUT PREPAYMENT OF
)	FEES
DEPARTMENT OF THE ARMY,)	
)	
Defendant.)	
_____)	

FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S
APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES¹

Before the Court is Plaintiff's Application to Proceed Without Prepayment of Fees, filed on May 17, 2013. ECF No. 3. The Court finds this matter suitable for disposition without a hearing pursuant to Rule 7.2(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii. After careful consideration, the Court FINDS AND RECOMMENDS that the district court DENY Plaintiff's Application.

DISCUSSION

On May 17, 2013, Plaintiff Alai Pene Koloi filed a Complaint requesting judicial review of the Army Disability Review Board determination dated March 28, 2013. ECF No. 1 at 2. Plaintiff filed his Application to Proceed Without Prepayment of

¹ Within fourteen days after a party is served with a copy of the Findings and Recommendation, that party may, pursuant to 28 U.S.C. § 636(b)(1)(B), file written objections in the United States District Court. A party must file any objections within the fourteen-day period allowed if that party wants to have appellate review of the Findings and Recommendation. If no objections are filed, no appellate review will be allowed.

Fees on the same day. Federal courts may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that the person is unable to pay such fees pursuant to 28 U.S.C. § 1915(a)(1). "[A]n affidavit is sufficient which states that one cannot because of his poverty pay or give security for the costs and still be able to provide himself and dependents with the necessities of life." Adkins v. E.I. Du Pont de Nemours & Co., Inc., 335 U.S. 331, 339 (1948) (quotations omitted); see also United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981) (quotations omitted) (the affidavit must "state the facts as to affiant's poverty with some particularity, definiteness and certainty"). In determining whether to grant an application to proceed without prepayment of fees, the Court is guided by whether the applicant's yearly income surpasses the poverty guideline. The Department of Health and Human Services ("HHS") 2013 Poverty Guidelines indicate that the poverty guideline for a five-person family in Hawaii is \$31,710. Annual Update of the HHS Poverty Guidelines, 78 Fed. Reg. 5182-83 (Jan. 24, 2013).

Plaintiff's Application states that he is not employed, but receives \$3,149 per month in veteran disability payments and \$903 per month in Social Security payments. ECF No. 3 at 1. This results in an annual income of \$48,624. Plaintiff has three grandchildren and one son who are dependent on Plaintiff for

support. Id. Plaintiff's identified monthly expenses are approximately \$3,360. Id. at 2. Based on the information provided in the Application, Plaintiff's income exceeds the \$31,710 poverty threshold for a five-person family in Hawaii. See 78 Fed. Reg. 5182-83. The Court therefore FINDS that Plaintiff does not qualify as a person who is unable to pay or give security for court fees and RECOMMENDS that the district court DENY Plaintiff's Application.

CONCLUSION

In accordance with the foregoing, the Court FINDS AND RECOMMENDS that Plaintiff's Application to Proceed Without Prepayment of Fees, filed May 17, 2013, be DENIED. If Plaintiff wishes to proceed with this action, he must remit the appropriate filing fee within thirty (30) days from the date that this Findings and Recommendation is acted upon by the district court. Failure to do so will result in the automatic dismissal of this action.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, MAY 21, 2013.




Richard L. Puglisi
United States Magistrate Judge

**KOLIO V. DEPARTMENT OF THE ARMY; CIVIL NO. 13-00252 LEK-RLP;
FINDINGS AND RECOMMENDATION TO DENY PLAINTIFF'S APPLICATION TO
PROCEED WITHOUT PREPAYMENT OF FEES**